

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs August 2, 2001

**BEN HAMBRICK v. DONAL CAMPBELL, COMMISSIONER**

**Appeal from the Chancery Court for Davidson County**  
**No. 00-1205-I    Irvin H. Kilcrease, Jr., Chancellor**

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**No. M2000-02907-COA-R3-CV - Filed November 15, 2001**

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A prisoner filed a petition for writ of certiorari more than sixty days after the entry of the order he was appealing from, in violation of Tenn. Code. Ann. § 27-9-102. The trial court dismissed the petition because of lack of jurisdiction. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court**  
**Affirmed and Remanded**

BEN H. CANTRELL, P.J., M.S., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and WILLIAM B. CAIN, JJ., joined.

Ben Hambrick, Petros, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Stephanie R. Reeves, Senior Counsel, for the appellee, State of Tennessee.

**OPINION**

**I.**

Ben Hambrick is a prisoner in the custody of the Department of Correction. In March of 1999, he was issued three disciplinary infraction reports for assaults on staff members at the DeBerry Special Needs Facility, where he was incarcerated at that time. The infraction reports were numbered 360514, 360487, and 360372. On April 7, the Disciplinary Board conducted a hearing on the charges, and found Mr. Hambrick guilty of all three.

The record before us does not contain the hearing report. However, according to Mr. Hambrick's petition, the Board recommended that he be punished by loss of 18 months sentence credits, 80 days "in the hole," a \$10 fine and that 60% be added to his Release Eligibility Date.

According to his appellate brief, the punishment included only 30 days “in the hole” and the loss of 9 months of sentence credits.

Mr. Hambrick appealed all three decisions to Warden Flora Holland, who affirmed them. He then attempted to appeal to the Commissioner of Correction. On April 26, Assistant Commissioner Jim Rose returned the appeals on incidents 360514 and 360487 to Mr. Hambrick, noting that no action had been taken, because no record of those incidents was found on the departmental computer system. On April 27, Commissioner Donal Campbell affirmed the Board’s decision on infraction 360372.

On April 17, 2000, Mr. Hambrick filed a Petition for Writ of Certiorari in the Chancery Court of Davidson County. His petition alleged numerous violations of his due process rights by the Disciplinary Board. Mr. Hambrick also claimed that he was not informed that the Commissioner had affirmed the Board’s decision on infraction 360372 until February of 2000.

The Department filed a Motion to Dismiss, or Alternatively for Summary Judgment on September 15, 2000, accompanied by the affidavit of the correctional employee who processes disciplinary appeals made to the Commissioner’s office. The basis of the motion was that the petition was filed in excess of the sixty day statutory time limit for writs of certiorari.

Mr. Hambrick filed a Response in Opposition to the Motion, which stated that “plaintiff is not seeking review of dead disciplinary infraction #360372, but all remaining infractions, #00360514, 00360487 arguably are still alive.” The chancery court filed a Memorandum and Order on October 25, dismissing Mr. Hambrick’s petition for untimeliness. This appeal followed.

## II.

The common law writ of certiorari enables a court to order an inferior tribunal to send up a complete record for review, so that the court can determine whether that tribunal has exceeded its jurisdiction, or has acted illegally, fraudulently or arbitrarily. *Yokley v. State*, 632 S.W.2d 123, 126 (Tenn. Ct. App. 1981). The reviewing court may not inquire into the intrinsic correctness of the decision below, but only the manner in which that decision was reached. *Powell v. Parole Eligibility Review Board*, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994).

Our legislature has decreed that to obtain the writ, a party must file his petition within sixty days from the entry of the order or judgment appealed from. Tenn. Code Ann. § 27-9-102. Failure to file the petition within the statutory time limit results in the order becoming final. Once the decision is final, the court cannot rule upon it, because it has been deprived of jurisdiction. *Thandiwe v. Traughber*, 909 S.W.2d 802 (Tenn. Ct. App. 1994); *Wheeler v. City of Memphis*, 685 S.W.2d 4 (Tenn. Ct. App. 1984).

In the present case, Mr. Hambrick apparently concedes that his petition was untimely in regard to infraction 360372, for it was filed more than eleven months after the Commissioner’s April

27, 1999 decision affirming the Disciplinary Board's determination. He contends, however, that his petition remained timely in regard to infractions 360514 and 360487 because the Commissioner never acted on his appeal.

It is true, as Mr. Hambrick argues, that his appeal on those two infractions was returned to him with no action taken, through no fault of his own. However, there is nothing in the record to indicate that he made any subsequent attempt to renew his appeal. The Uniform Disciplinary Procedures of the Department of Correction state at #502.01(F) that "[o]nly the inmate (or the advisor at the inmate's request) may appeal a decision of the disciplinary board," and further, that "[i]t is the responsibility of the inmate, not the inmate advisor, to ensure that any appeal is processed and that any such appeal adheres to the time limits."

When the Assistant Commissioner notified Mr. Hambrick that his appeal could not be processed because the necessary records on the Department's computer could not be found, that may have served to toll the usual 15 day time limit required by the Disciplinary Rules for appeals to the Commissioner, but it did not excuse the appellant from attempting to file another appeal.

It appears to us that through his inaction, Mr. Hambrick waived his right to appeal to the Commissioner, thereby allowing the Board's decision to become final without the Commissioner's assent. In light of the peculiar facts of this case, we will not attempt to determine exactly when the Board's decision became final, thus starting the sixty-day countdown for the filing of a petition for writ of certiorari. But since more than a year passed between the Board's decision and the filing of the petition, we have no doubt that the filing did not meet the time requirements of Tenn. Code Ann. § 27-9-102, and that the chancellor was correct in dismissing the petition for lack of jurisdiction.

### **III.**

The order of the trial court is affirmed. Remand this cause to the Chancery Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant, Ben Hambrick.

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BEN H. CANTRELL, PRESIDING JUDGE, M.S.